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SPECIFIC GROUPS AND INDIVIDUALS: MIGRANT WORKERS

Report prepared by Ms. Gabriela Rodríguez Pizarro, Special Rapporteur, in pursuance of resolution 2001/52

Addendum

Mission to Ecuador*

* The executive summary of this report will be distributed in all official languages. The report itself, which is annexed to the summary, will be distributed in the original language and in English.

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CONTENTS

		Paragraphs	Page
Executive summary			3
Annex			
Introduction		1 - 3	6
Chapter			
I.	PROGRAMME OF THE VISIT	4 - 17	6
II.	THE GENERAL CONTEXT OF MIGRATION IN ECUADOR	18 - 24	10
III.	THE CONTEXT OF EMIGRATION FROM ECUADOR	25 - 47	11
	A. The impact of emigration on places of origin	41 - 46	15
	B. Cases of trafficking and smuggling of minors reported to the Special Rapporteur	47	16
IV.	THE CONTEXT OF IMMIGRATION INTO ECUADOR	48 - 61	16
V.	FORUMS FOR DEVELOPING ECUADOR'S POLICIES RELATING TO MIGRATION	62 - 73	19
	A. The role of the Ombudsman	68 - 69	20
	B. The role of civil society	70 - 71	21
	C. The international community: the International Organization for Migration (IOM) and the Office of the United Nations High Commissioner for Refugees (UNHCR)	72 - 73	21
VI.	CONCLUSIONS AND RECOMMENDATIONS	74 - 84	22

Executive summary

This report is submitted in accordance with resolution 2001/52 of the Commission of Human Rights and concerns the official visit paid by the Special Rapporteur on the human rights of migrants to Ecuador between 5 and 16 November 2001. The Special Rapporteur takes this opportunity to thank the Government of Ecuador for inviting her to visit the country and for the valuable assistance and cooperation afforded to her during her mission.

In the course of her visit, the Special Rapporteur noted that civil society in Ecuador is highly organized to address the phenomenon of migration, including associations of migrants and their families, which have considerable skills in making proposals and possess detailed knowledge of the situation regarding migration in the country and its effects. This is due in particular to the vital work of monitoring and assistance to migrants and their families accomplished by various organizations in the country.

The authorities in Ecuador and civil society organizations have found avenues of dialogue and concerted action to help in seeking joint solutions to the problems facing the country where migration is concerned. The Special Rapporteur noted that steps taken by indigenous, social and peasant organizations in their negotiations with the authorities have led to important commitments on the part of the Government, in the context of the dialogue on migration between the Government and indigenous, peasant and social organizations.

The Special Rapporteur highly values the process of cooperation between the authorities and civil society in formulating an operational plan relating to the human rights of migrants, foreigners and refugees, which has yet to be put into effect. The two initiatives mentioned, together with the National Plan for Ecuadorians Abroad, which is being drawn up by the Ecuadorian Foreign Ministry, constitute important tools for the formulation and coordination of national migration policy. These proposals have been accompanied by significant measures for the protection of migrants abroad, including in particular the signing of a bilateral agreement with Spain and approval by the Congress of Ecuador of the ratification of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

In this report, the Special Rapporteur highlights the situation of members of the families of migrants who remain in the places of origin, weighed down by debt and exploited by moneylenders who impose usurious rates of interest. The families of migrants in this situation live under the threat of being stripped of their property, and are dependent on remittances - for the most part obtained illegally - to pay what they owe. The Special Rapporteur also wishes to express her deep concern at the psychosocial effects of migration in the places of origin, particularly family break-ups and the abandonment of children and young people. She observed during her visit that many State institutions and provincial authorities have still not become fully aware of the problems experienced by this segment of the population, and considers that action by the authorities in this area should be strengthened.

Concerning the causes of emigration and the circumstances in which it takes place, the Special Rapporteur noted that the lack of opportunities for a large proportion of the population to lead and provide their families with a decent life as the result of their labours generates a

large-scale flow of Ecuadorians abroad. Extreme poverty, poor knowledge of legal ways of emigrating and the risks involved in illegal migration, and lack of proper papers, mean that the population is especially vulnerable to networks which engage in smuggling and trafficking of migrants. The Special Rapporteur noted that the smuggling of Ecuadorian migrants has reached acute levels and that smuggling networks operate with impunity.

The Special Rapporteur was provided with many accounts of the abuses to which migrants are subjected during smuggling. Migrants' families reported cases of disappearance, abandonment in transit and sexual abuse of women and minors. She also learned of the risks encountered by migrants during their journeys, the fact that migrants are treated as criminals in some transit countries, and the fact that their rights are not protected in their countries of destination because of their illegal status.

Concerning immigration to Ecuador, the Special Rapporteur heard expressions of concern from various sectors of Ecuadorian society at the rise in xenophobic sentiments, particularly vis-à-vis immigrants of Colombian nationality. On the border, it was reported that such sentiments are becoming more acute as the conflict in Colombia and the application of Plan Colombia affect security and economic well-being in the region.

In the prison system, the Special Rapporteur noted with concern the situation of many foreign detainees who benefit from no representation from their countries' consuls. She was provided with testimony from persons unable to speak English or Spanish who had been tried without even being able to communicate with their defence counsel, in the absence of interpreters for their languages. Most detainees in such situations come from African, East European and Asian countries. The Special Rapporteur also encountered foreigners imprisoned for ordinary offences who, though they claimed to have served their sentences, remained in prison because they had no travel documents or money for the journey home.

Recommendations

The Special Rapporteur considers that combating illegal migration should be a priority in Ecuadorian policy, and that coordinated actions on the part of the State should be devised in order to check corruption and the impunity enjoyed by the networks. The principal focus of this policy should be coordinated action by the system of administration of justice and the police, as well as prevention through local development programmes backed up by the international community.

The Special Rapporteur considers that there is a fundamental need to enhance the State's ability to address the needs of the families of migrants who are located in the areas where illegal migration originates, and to strengthen the work being accomplished by the Ombudsman in addressing the problems encountered in the areas of origin, including prevention of smuggling. She recommends the implementation of psychosocial programmes to help the families of migrants, and an active policy of providing advice on how to invest remittances productively, in joint efforts by State institutions, civil society and the international community. She also recommends that the fund set up under the programme for the development of Ecuadorian migrants and their families should be brought into operation, together with other initiatives designed to facilitate access to credit.

The Special Rapporteur deems it important to examine appropriate legislative reforms to bring national standards into line with the commitments entered into by Ecuador in the field of human rights, especially in the light of the Ecuadorian Congress's recent approval of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. In particular, she considers that the Migration Act should be revised to ensure that it does not contain discriminatory criteria which exclude foreigners, and that consideration should be given to introducing legislative reforms so that deportation orders are subject to administrative or judicial review and that victims of smuggling on Ecuadorian territory are not penalized. She is of the view that Ecuador should seek solutions to the situation of foreign migrants who claim that they remain in detention although their release has been ordered.

The Special Rapporteur encourages Ecuador to continue concluding bilateral agreements to regulate migration by its nationals abroad, and to coordinate with the Ministry of Labour all matters relating to migrant workers. She recommends that Ecuador should include in its negotiating strategy dialogue with transit States involved in migration by Ecuadorians, in order to apply measures of protection for its citizens, the effective investigation of abuses, the non-penalization of victims of smuggling and a multilaterally coordinated strategy for preventing and combating smuggling.

The Special Rapporteur considers it important that civil society and indigenous, social and peasant organizations should pursue the dialogue initiated with the State. She encourages the State to continue to fulfil the commitments it has assumed in this area and to pursue the dialogue it has begun with migrants and civil society organizations.

Lastly, the Special Rapporteur recommends that the international community should provide support to Ecuador in its efforts to promote and protect the human rights of migrants and their families.

Annex

Introduction

1. The Special Rapporteur on the human rights of migrants visited Ecuador from 5 to 16 November 2001 at the invitation of the Government of Ecuador. The Government had issued the invitation following a request made to all Governments by the Special Rapporteur, at the beginning of her mandate, announcing her appointment and enumerating the provisions of the resolution which set out the mandate requesting Governments to cooperate with the Special Rapporteur and to consider the possibility of inviting her to visit their countries. The visit to Ecuador was the second such visit made by the Special Rapporteur.

2. The Special Rapporteur takes this opportunity to thank the Government of Ecuador for inviting her to visit the country and for the valuable assistance and cooperation afforded to her. Prior to the mission, she and her supporting staff contacted the Permanent Mission of Ecuador to the United Nations Office at Geneva, which played a major role in planning and facilitating the visit and confirmed the final dates of the visit in a letter dated 20 September 2001. The Ecuadorian authorities granted all the requests she made for meetings, and the mission took place in an atmosphere of transparency and openness. She also wishes to express her sincere appreciation for the assistance provided by the United Nations Development Programme (UNDP) and by the many non-governmental organizations and individuals whom she had an opportunity to meet during her stay in Ecuador.

3. It is not intended that this report should provide a thorough and specialist investigation, since its scope is restricted to the mandate conferred on the Special Rapporteur. The aim of the report is to stimulate a broad discussion on the situations facing the migrants described here. The conclusions and observations set out in the report are based on the information gathered during the mission and on relevant international norms. In this regard, the Special Rapporteur has paid special attention to the circumstances and impacts of illegal migration and smuggling of migrants in Ecuador, the situation of families in the places of origin of migration, and immigration into Ecuador, within the framework of the human rights of migrants.

I. PROGRAMME OF THE VISIT

4. The Special Rapporteur held meetings with officials from the Ministry of Foreign Affairs, the Ministry of Labour, the Ministry of the Interior and Police and the Ministry of Social Welfare, as well as the Commissions of the Congress on International Affairs, Human Rights, Women, Children and the Family and Indigenous Affairs and other ethnic groups. She also held meetings with staff of the Ombudsman's office and non-governmental and social organizations, and with representatives of the academic world in Quito, Cuenca and Guayaquil. Throughout her visit she held meetings with members of the families of migrants, women migrants and minors affected by migration. She visited prison institutions, where she spoke to migrants in detention. She also met the Sectoral Sub-Commission on the Operational Plan relating to the Human Rights of Migrants, participants in the dialogue on migrants and the Advisory Commission on Migration. She met officials from various government bodies including migration bodies, the Ombudsman's office and the National Institute for Children and the Family in Santo Domingo de los Colorados, Cuenca, El Cañar and Guayaquil. In these two last towns,

she also met representatives of the Ministry of Social Welfare. During her visit the Special Rapporteur had an opportunity to meet representatives of the international community, United Nations agencies, the International Organization for Migration (IOM) and some international non-governmental organizations, as well as the consuls of a number of countries.

5. During the first part of her visit, from 5 to 9 November, the Special Rapporteur held meetings with officials and agencies in Quito. On 5 November, following a short coordination meeting in the UNDP offices in Quito, she held a first meeting with Ambassador Luis Gallegos, Under-Secretary for Political Affairs in the Ministry of Foreign Affairs, Ambassador Paulina García Donoso de Larrea, Under-Secretary for International Agencies, Ambassador Francisco Proaño, Director-General for Human Rights in the Ministry of Foreign Affairs, Ambassador Fernando Córdoba, Adviser on Migration Issues in the Ministry of Foreign Affairs and Minister Alfonso Morales, on behalf of Ambassador Carrión, Director-General for Ecuadorians Abroad.

6. Also on 5 November the Special Rapporteur held a meeting with the Sectoral Sub-Commission on the Operational Plan relating to the Human Rights of Migrants. Participants were: Col. José Vicente Venalcazar, Director-General of Migration; Col. Mauro López, Liaison Official of the National Police and the Ministry of Foreign Affairs; Wilson Mayorga, of the National Directorate of Human Rights of the Ministry of the Interior and Police; Tania Cedeño, of the Regional Foundation for Advisory Services in Human Rights and the Regional Institute for Advisory Services in Human Rights (INREDH); Susmara Solis, Coordinator of the National Council for Women (CONAMU); Daniela Balsera, of the Pro-refugees Committee of the Department of Human Mobility of the Ecuadorian Episcopal Conference; Pepe Torres and Edmundo Terán, of the World Association of Ecuadorians Living Abroad (ERE); José Egas of the Committee for Aid to Persons Displaced by Violence; José Sieber, Protection Officer in the Office of the United Nations High Commissioner for Refugees (UNHCR); and Rosa de García, Director of the IOM programme in Ecuador.

7. During a lunch organized by the Foreign Ministry, the Special Rapporteur had an opportunity to talk to Hugo Moreno, Chair of the International Affairs and National Defence Commission of the Congress; Bolivar Sánchez, President of the Congress's Commission on Human Rights; and Minister Galo Larrea, Director-General for Consular Affairs. Also present were Ilona Szemzo of UNDP and Rosa de García of IOM. In the Ministry of Foreign Affairs the Special Rapporteur held a meeting with the units responsible for migrants' affairs. At the end of her first day in Quito, in IOM, she met Augusto Mariategui, Director-General of the IOM regional office for the Andean Community, and IOM officials assigned to Ecuador.

8. On 6 November a meeting was held between the Special Rapporteur and civil-society organizations, including Ecuadorian migrants' organizations. The organizations represented included: the Ecuadorian Episcopal Conference, the Standing Assembly of Human Rights, the Children's Forum, Cooperazione Internazionale, Rumiñahui, the Regional Foundation for Advisory Services in Human Rights (INREDH), the Segundo Montes Mozo Centre, the Pueblo Indio Foundation and the Ecumenical Commission for Human Rights. She also held a brief meeting with Dr. Heinz Moller, the Minister for Foreign Affairs, with whom she conducted

a joint press conference in the Ministry. Unfortunately, it was impossible to hold the meeting with the Foreign Minister scheduled for the afternoon of 6 November for the purpose of further discussions with the Special Rapporteur. At a meeting to which academic bodies in Quito were invited, representatives were present from the Latin American Faculty of Social Sciences (FLACSO), the Private Technical University of Loja and the Andean University. The Special Rapporteur also held a working dinner with the Episcopal Conference's Pastoral Office of Human Mobility. She was able to meet Dr. Martín Insua Chang, the Minister of Labour and Human Resources, and Dr. Ernesto Pazmiño, the Under-Secretary in the Ministry of Social Welfare. A meeting held in the Ministry of the Interior and Police was attended by Dr. Marcelo Merlo Jaramillo, the Minister of the Interior and Police, the Commandant General of the National Police, the Director of the Aliens Office and the Director-General of Migration.

9. On 7 November the Special Rapporteur visited the García Moreno prison in Quito and the Pre-trial Detention Centre. On 8 November she held a working breakfast with Hugo Moreno Romero, Chair of the International Affairs Commission of the Congress, and representatives of the Commission on Women, Children and the Family. She also held a meeting with Claudio Mueckay, the Ombudsman, which was attended by the Indigenous People's Ombudsman, the Director of the National Directorate for the Defence of the Rights of Migrants in the office of the Ombudsman, the North America representative of the Ombudsman, the Legal Adviser to the Ombudsman and the head of the office of public defender for the prison system. She also met representatives of United Nations agencies operating in Ecuador, notably UNDP, UNHCR, the World Health Organization (WHO), the United Nations Population Fund (UNFPA), the World Food Programme (WFP) and the United Nations Development Fund for Women (UNIFEM).

10. On 8 November a working lunch was held with Humberto Romero Montalván, Director of the Aliens Office in the Ministry of the Interior and Police, who chairs the Consultative Council on Migration. A meeting was held later with representatives of public bodies and international agencies which jointly coordinate projects dealing with migrants and their families. It was attended by Gabriel Alom, who handles consular matters in the Embassy of Spain, representatives of the Netherlands Cooperation Service, IOM, CONAMU, the Office of the Director for Protection of Minors in the Ministry of Social Welfare, the Office of the Director-General for Migration and the National Institute of Children and the Family (INFA). The Special Rapporteur's programme also included meetings with deputies Ximena Ortiz Crespo, who deals with migrants issues in the Congress's Commission on Human Rights, and Guilberto Talahua Paucar, Chair of the Congress's Commission on Indigenous Affairs and other ethnic groups.

11. On 9 November a meeting was held with the Inter-institutional and International Adviser on Development Cooperation of the Municipality of Santo Domingo de los Colorados, Capt. Carlos Torres, Chief of Migration in the National Police of Santo Domingo, the Ombudsman of Santo Domingo and a representative of INFA. Regrettably, it was not possible to hold the scheduled meeting with civil-society organizations in Santo Domingo, because of slippage in the programme. In the United Nations office, the Special Rapporteur met representatives of indigenous organizations and later met the consuls of Bolivia, Italy and Colombia.

12. Between 10 and 12 November the Special Rapporteur visited the south of the country. In Cuenca, she held a meeting attended by: Monsignor Luis Alberto Luna Tovar, Chair of the Azuay Commission on Human Rights; Luis Urguiles, Ombudsman of Azuay; Milton Ordóñez, Ombudsman of El Cañar; Fernando Vega, curate of the Pastoral Social Office; and Franklin Ortiz of the Pastoral Office of Human Mobility. Many civil-society organizations participated, including the Ecumenical Commission on Human Rights, the Inter-American Forum on Human Rights (FIDEH), the Azuay Movement for the Defence of Migrants, the World Association of Migrants and the Pajara Pinta Organization. The meeting was also attended by members of the families of migrants, especially migrants who had disappeared or had been detained in transit countries. In Azogues, the Special Rapporteur was received by Ruth Abad de Brito, the Governor of El Cañar, and other officials. She visited Paute and San Marcos, two communities which are the homes of Ecuadorian migrants abroad. In the same afternoon, in Cuenca, she received testimony from members of the families of migrants who had been detained in countries through which they were passing on their way to the United States of America. In Cuenca, on 12 November, she held a meeting in the Governor's office with Ricardo Muñoz Chávez, the Governor of Azuay, and other officials. In the University of Cuenca, she was received by Dr. Jaime Astudillo Romero, the Rector, who gathered together members of various faculties in which research programmes of migration are pursued.

13. On 13 November the Special Rapporteur travelled to Guayaquil. She met Marcos Ruinruil, the political head of the canton of Guayas, representing the Governor, Dr. Eduardo Franco Lool, Under-Secretary for Social Welfare for the coastal region, Maj. Renato Noboa, Deputy Chief of Migration, and Francisca Arizaga Pareja, Deputy Regional Director of Social Communication in INFA, Guayaquil. She also held a meeting with representatives of civil-society organizations in the coastal region, including the office of the curate of the Guayaquil Pastoral Social Office, the board of the Department of Welfare of the University of Guayaquil, the Standing Committee on Human Rights of Guayaquil and the Committee of Foreign Students.

14. The Special Rapporteur spoke to migrants in the Coastal Prison Centre, the Pre-trial Detention Centre and the Women's Centre for Social Rehabilitation. She later held a meeting with Franklin Noreno Quezada, the Ombudsman of Guayas.

15. In Nueva Loja (Lago Agrio), on 14 November, the Special Rapporteur met Maj. Espinoza, the Provincial Head of Migration for Sucumbios, and Lt. Garces, Provincial Head of Migration for General Farfán. She spoke to a Colombian migrant who had been detained that morning because he had no papers; he had been living in Ecuador for two and a half years. She also had an opportunity to briefly meet Manuel Chávez, the Ombudsman of Sucumbios, and held a lengthy meeting with representatives of civil-society organizations and individuals, represented in the Civil Society Assembly, and with the Human Rights Office of the Pastoral Office of Human Mobility. On 15 November she met officials of UNHCR, IOM, the Red Cross, Médicos sin Fronteras and Terre des Hommes in Sucumbios. She also met the Bishop of the province, Monsignor Gonzalo Mareñón.

16. In the afternoon of 15 November the Special Rapporteur attended a meeting to mark the end of her visit with officials from the Ministries of Foreign Affairs, the Interior and Police, Social Welfare, and Labour and Human Resources, as well as INFA and CONAMU.

Participants included Camilo Restrepo, Director of the National Directorate for Defence of the Rights of Migrants in the office of the Ombudsman; Galo Larrea, Minister and Director-General of Consular Affairs in the Foreign Ministry; Jorge Icasa, Director-General for Migration Affairs in the Foreign Ministry; and Amparo Ponde, Director of the Decentralized Territorial Unit of Pichincha. Later she briefly met Ms. Aase Smedler, the United Nations Resident Representative.

17. On 16 November a meeting to review the visit was held with Ambassador Luis Gallegos, the acting Foreign Minister, at which the Special Rapporteur expressed appreciation for the welcome she had received.

II. THE GENERAL CONTEXT OF MIGRATION IN ECUADOR

18. Ecuador is a party to the principal United Nations international human rights instruments.[1] The Special Rapporteur was informed during her visit that the Commission on International Affairs and National Defence of the Congress had approved the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, which should therefore be ratified shortly. Ecuador has not ratified the United Nations Convention against Transnational Organized Crime, or the two protocols to it.[2] However, the Special Rapporteur was informed that efforts in that direction are under way in the Congress.

19. Article 11 of the Constitution of Ecuador provides that "the State shall endeavour to protect Ecuadorians who are abroad". Article 23 lays down "the right to cross the national territory freely and to choose one's residence", adding that "Ecuadorians shall enjoy freedom to enter and leave Ecuador". Article 23 also prohibits trafficking in persons in all its forms (para. 4).

20. The Migration Act,[3] the regulations issued in pursuance of the Act,[4] and the Aliens Act[5] are the principal texts which regulate matters relating to migration. The Migration Act governs the organization and coordination of services relating to entry into and exit from the country by nationals or foreigners, and is implemented by the Ministry of the Interior and Police and, through the Ministry, the office of the General Commander of the civilian police.

21. Four main State agencies are responsible for migration policy. The Office of the Director-General for Aliens and the Office of the National Director for Migration both fall under the Ministry of the Interior and Police, while the Office of the Director-General for Migration Affairs and the Office of the Director-General for Ecuadorians Living Abroad form part of the Ministry of Foreign Affairs. There is also a Consultative Council on Migration Policy, comprising the above-mentioned bodies and other ministries concerned.

22. The Government of Ecuador informed the Special Rapporteur that in August 2000 it had suggested to the Government of Spain that bilateral negotiations should be started on an agreement to regulate migratory flows between the two countries and create a special regularization process for Ecuadorian citizens. The Special Rapporteur was informed that on 25 January 2001 a range of measures had been agreed by the two countries resulting in regularization of the status of 25,000 Ecuadorians.

23. On 29 May 2001 the two countries signed an agreement relating to the regulation and management of migratory flows which lays down rules for the acquisition of legal status, the regulation of migratory flows in an ordered and coordinated manner, respect for the rights of migrants, and promotion of opportunities to return with dignity. The Foreign Ministry pointed out that negotiations have also been initiated with Italy. In this context, the Ministry of Labour emphasized to the Special Rapporteur the importance of ILO Convention No. 97 concerning Migration for Employment (Revised 1949) and the role that the Ministry should play in the preparation of conventions for the regulation and management of migratory flows with host countries (such as Spain), in coordination with the Foreign Ministry.

24. The agreement on permanent migratory status between Colombia and Ecuador, which was concluded in August 2000, lays down that nationals of the two countries may enter either country without a visa for 180 days each year, the sole requirement being the presentation of a national identity document. The two countries have granted migrants the same rights, guarantees and civil obligations as their nationals.

III. THE CONTEXT OF EMIGRATION FROM ECUADOR

25. Ecuador has a population estimated at 12,646,095.[6] The Foreign Ministry informed the Special Rapporteur[7] that in 1999 the rate of unemployment was an unprecedented 14.4 per cent. The number of households in which consumption stood below the poverty line rose from 34 per cent in 1995 to 48 per cent in 1998 and 56 per cent in 1999. Between 1995 and 1999 the incidence of destitution grew from 12 per cent to 21 per cent in the country as a whole, so that one in five Ecuadorians now live in households which cannot even feed themselves. These factors, taken together with the foreign debt burden, are the cause of emigration by Ecuadorians, in the view of the Foreign Ministry. The Congress's Commission on Indigenous Affairs reported that the country's per capita debt is currently the highest in Latin America and that 9 out of every 10 members of the indigenous population are poor. The Special Rapporteur was concerned to receive information from representatives of civil society indicating that there is a discrepancy between the country's legal framework (which guarantees economic, social and cultural rights) and actual practice. The *Alternative Report on Economic, Social and Cultural Rights*[8] records that most Ecuadorians are unable to fully exercise and enjoy their human rights (education, health, work, housing, food and social security).

26. Statistics prepared by the office of the National Director for Migration show that in 2001,[9] more Ecuadorians left the country than entered it - 393,563 against 288,610. There are serious difficulties involved in estimating the total number of Ecuadorians abroad because of the large flows of illegal migration. However, the Special Rapporteur noted from the information she received that a rough total of 1.8 million Ecuadorians are possibly abroad, equivalent to almost 15 per cent of the population of the country.

27. The phenomenon known as *coyotaje* or (in official United Nations terminology) the smuggling of migrants by land, sea and air places Ecuadorians who leave the country in a situation of acute vulnerability. In conversations the Special Rapporteur noted that leaving the country illegally using the *coyotaje* system is regarded by the population as the normal way of emigrating. The networks which smuggle migrants operate from the migrants' place of origin

and comprise a chain of agents stretching right up to the moment of arrival in the country of destination, including moneylenders, transporters, those who falsify papers and those who smuggle people across the border. There are routes by air and sea from Ecuador to the United States via Central America and Mexico, and to Europe, especially Italy and Spain.

28. The Special Rapporteur noted that the smuggler's activity begins with the preparation of false papers or the sale of false visas for genuine passports. She heard reports that smugglers make use of legal documents authorizing the departure of minors, as well as illegal documentation in which the age, name and nationality of the minor are false.[10] The activities of the smugglers are supported by those of the moneylenders. These agents lend money to people of limited means at usurious interest rates and create situations in which the members of migrants' families who remain behind are veritably oppressed by debt. Because they are illiterate, many such family members sign pieces of paper which are blank or contain statements they do not understand, with the result that houses and land are signed over to the usurer.

29. In the case of smuggling by sea, the smugglers make sure they assemble a large number of migrants, whom they transport by bus to the Ecuadorian coast, to wait in houses, hostels or hotels from which the networks operate, for an appropriate moment to board ship. Some persons reported that migrants make a second payment to the captain or his crew. The same procedure is followed in the case of smuggling by air, but at the individual level. The individuals are transported to Quito or Guayaquil, where they wait in hotels or hostels (with which an arrangement has been made) until they are moved to the international airports. The documents which they use to travel are normally given to them at the last minute. The sums reported in connection with the total amount paid to the smugglers range between US$ 8,000 and US$ 19,000. The Special Rapporteur also received information indicating that some travel agents serve as a screen to conceal smuggling of migrants, offering documentation and visas together with air tickets.

30. The Special Rapporteur was informed that the Congress has revised article 440 of the Penal Code in order to categorize this smuggling as an offence.[11] The Commandant General of the police described the difficulty of intercepting groups of people when they are travelling within Ecuador with the aim of leaving the country illegally with the help of smugglers, owing to the duty of the authorities to uphold the right to free movement of persons. The Ombudsman conveyed to the Special Rapporteur his concern that in some transit countries, the police and smugglers negotiate the handing over of some groups of migrants in return for the passage of others. A cause for concern is the information received by the Special Rapporteur relating to alleged collusion by some members of the Ecuadorian security forces, who facilitate illegal departures in return for money.

31. In the south of Ecuador, many migrants' families say they do not know the whereabouts of their relatives, whether they have been detained, or whether they have died in the attempt to emigrate. They do not know the names under which their relatives travelled, or the route taken. They also told of extreme forms of abuse in the transit countries, the sexual abuse of women, imprisonment with criminals or in inhuman conditions, extortion and ill-treatment by police authorities, etc. Civil-society organizations in the south called on the Special Rapporteur to highlight the absence of machinery to investigate such abuses and the need to create transparent machinery to establish the whereabouts of the migrants.

32. A matter of grave concern is the information received by the Special Rapporteur concerning the situation of women migrants and minors who are sexually abused by smugglers as part of the price they have to pay. The need to leave the country exposes the women to harsh forms of abuse by these networks and by the security or migration officials in the countries of transit and destination.

33. The migrants' families also described the oppression they experience vis-à-vis the usurers, who collect between 6 and 8 per cent interest each month, and the existence of a network of lawyers linked with the networks of smugglers, who pressure the migrants to pay by threatening to seize land, houses and property. In the face of this phenomenon, it is important to emphasize the difficulties reported by Ecuadorians in obtaining credit through official channels. In this context it will be important for the Government to fulfil the commitment it entered into in the initial agreements concluded as part of the dialogue on migration between the Government and indigenous, peasant and social organizations relating to the establishment of a fund under the programme for the development of Ecuadorian migrants and their families. Against the background of these problems, the Special Rapporteur received accounts from young people who have debts ranging from US$ 18,000 to US$ 40,000 and who find themselves in a vicious and perverse circle of dependence on the smugglers. The smugglers promise to make three attempts at entering the target country when they conclude a deal with migrants. When the first attempt fails, the only way the young people and migrants in general have of paying their debt is to try again, so that they are wholly dependent on the smuggler to pay what they owe. The "three attempts" promise also affects the ability of migrants to denounce networks of smugglers and usurers.

34. The Special Rapporteur noted that remittances are not used for activities that are productive or generate jobs, but rather for superfluous expenditure, which facilitates drug addiction among young people and, as a result, the abandonment of studies. In this regard the Special Rapporteur was most interested in information supplied by Netherlands aid officials concerning income-generating programmes being implemented in areas affected by high levels of migration, as well as other initiatives by bodies such as CONAMU and UNDP. IOM informed the Special Rapporteur of the ways in which it is advising the Government on the implementation of programmes which could be of benefit to migrants' relatives who remain behind.

35. A serious problem which stood out during the Special Rapporteur's visit is the impunity enjoyed by the networks of migrant-smugglers. The Governor of Azuay said that his office is working with the civil registration authorities to ensure better monitoring of the issue of documents. The Special Rapporteur was informed that many people make use of agents to handle their papers and do not become involved in procedures personally. The Governor also said that meetings had been held with the association of travel agents to alert them to the problem of smuggling and encourage them to gain thorough knowledge of their clients. The acting prefect of El Cañar said that the police were aware of, and had lists of the names of, some 30-40 highly influential people in the area who are involved in smuggling migrants. In the office of the Governor of Guayas, the deputy chief of migration for the coastal area explained the role of the police in preventing and suppressing the phenomenon of illegal migration and smuggling, as well as the lack of personnel and logistical facilities to tackle the problem. As an example, it was reported that in the province of Manabi, where various smuggling networks are active, there

are only eight men assigned to the Migration Police. The Special Rapporteur learned that in Guayas the Migration Police are responsible for monitoring the official ports used for entering and leaving the coastal region. It was reported that there is no infrastructure for monitoring unofficial departures of vessels and preventing smuggling.

36. The Special Rapporteur is concerned at the fact that the revision of the Penal Code has had no impact on punishment of the networks of smugglers in the country, and that full account has not been taken of the problem of illegal migration in the country's institutions and public policies, especially in the interior. The despair of migrants' families and family break-ups, among other problems, seem to be worsening as a result of the failure of institutions to respond to smuggling and usury. In this regard, praise is due to the organizations of migrants, families, the communities themselves, civil-society organizations and such bodies as the Pastoral Office of Human Mobility and the Ombudsman's office for the huge effort they are making to address this dehumanizing problem. These efforts are accompanied by deep understanding of the reality of migration and considerable skills in making proposals on the part of civil society, which should be harnessed and should be heeded by the authorities in order to underpin their policies to combat smuggling of migrants. In this regard, the civil-society organizations warned the Special Rapporteur of the effects being produced by lack of effective legal remedies in the face of smuggling in the regions that are home to the migrants, which are beginning to experience incidents of parallel or "do-it-yourself" justice, extending even to the hiring of assassins to avenge rights that have been violated.

37. The resources of the Ombudsman's office in the areas from which migration originates need to be strengthened so that it can continue its work in protecting citizens with real institutional support. There is a need for the State to place priority on combating the networks of smugglers and preventing illegal migration in view of the abuses suffered by migrants in this context. This prevention effort should be multifaceted. In this regard, the Special Rapporteur attaches importance to the initiative taken by the Foreign Ministry, backed by advisory services from IOM, to issue a new passport with new features that make counterfeiting difficult. Added to these measures is the idea of creating an identity document for Ecuadorians abroad, which would be issued by consulates.

38. Mention should be made of the National Seminar on the Human Rights of Ecuadorian Migrants, held in Cuenca in February 2001, and attended by representatives of civil-society organizations, the Ecuadorian Foreign Ministry and IOM. The participants found that, far from enhancing their quality of life, illegal migration exposes Ecuadorians to serious violations of their rights committed in the context of smuggling, and abuse of the families who remain behind. They concluded that legal migration should be encouraged and promoted, in a context of complete respect for fundamental rights.

39. The Special Rapporteur highly values resolution 2001/56 adopted by the Commission on Human Rights on 24 April 2001, which was sponsored by Ecuador, and especially paragraph 2, in which the Commission "encourages States of origin to promote and protect the human rights of those families of migrant workers which remain in the countries of origin, paying particular attention to children and adolescents whose parents have emigrated", and "encourages international and non-governmental organizations to consider supporting States in this regard".

40. Finally, mention should be made of the meetings the Special Rapporteur held with members of the academic world. In Quito she noted a certain lack of connection between the social realities in the country in terms of emigration, on the one hand, and the research and teaching functions of the universities on the other. In Cuenca, she was informed that the Faculty of Medicine of the University of Cuenca is conducting a study on migration and AIDS. A diagnostic study on stress in migrants' families is also under way. In the Faculty of Economics a project has been agreed with the European Union to study the impact of remittances on local development, and existing mechanisms for formalizing debts entered into by the inhabitants are being studied in a joint initiative with a mutual society in the area. The Special Rapporteur underlined the need for the academic world to demonstrate leadership by drawing up creative proposals in the psychosocial, economic, legislative and political spheres to deal with the effects of illegal migration and its prevention. In addition, academics can play a vital educational role in raising awareness among the population, the State, the media and society as a whole of the rights of migrants and the members of their families and the dehumanizing effect of illegal migration, as well as the long-term impact on the country in terms of its productive capacity, the brain drain and disintegration at the family and social level.

A. The impact of emigration on places of origin

41. The mayor of Azogues described the situation in the migrants' places of origin as one of "collective anguish". The Special Rapporteur's visit to the communities there confirms this view. In Paute, members of the community told her that a child of 13, whose parents had emigrated, had committed suicide, and other suicide attempts were known to have occurred. They explained that the situation of women is particularly difficult, owing to social and psychological pressure and the fact that they were harassed by their husbands' families for control of the money remitted by the husbands. They said that many of them had been forbidden to organize in groups or leave their homes. The community of Paute attributes the high levels of migration by Ecuadorians to lack of access to basic services such as education and health, and especially the lack of jobs. They also say that corruption and debt servicing are the main factors preventing the Ecuadorian people from developing in their own country.

42. The summary of the Equal Opportunities Plan drawn up by CONAMU, which was presented to the Special Rapporteur in Cuenca, states that women who stay behind as heads of single-parent households take on new roles in the sphere of production and in the community. However, men continue to control the resources of such women and decision-making in all aspects of their lives. Children are obliged to take on huge tasks which are inappropriate to their age, and which are assigned according to sex. They are also subjected to physical, psychological and sexual abuse by relatives or neighbours who still control them. Yet some women also report that migration by members of their families gives them an opportunity to participate more freely in community activities, exercise leadership and take their own decisions within and outside the home.

43. In San Marcos, the Special Rapporteur was received by the community, which was waiting for her in the town square. Members presented heart-rending accounts of the lives led by migrants and their families. In particular, the Special Rapporteur listened to children who did not know their parents. She also received a collection of letters written to the migrants by young people deploring the emotional vacuum in which they were left as a result of the absence of their

fathers and mothers. They viewed migration as negative because it destroys homes and makes the population suffer. Indeed, many would-be migrants die in the attempt, leaving behind widows, widowers and orphans.

44. A young women described her attempt to emigrate and an accident in which she was involved when she was being transported by traffickers in Mexico. She lost a friend with whom she was travelling in the accident. She explained that despite her broken bones she had been held in detention in Mexico City, where she had suffered other abuses at the hands of the prison authorities.

45. The fact that most of the families in these communities have members involved in illegal migration means that reunions or periodic visits are out of the question. Grandmothers are afraid that they will die without seeing their grandchildren and without bidding farewell to their children. They reported that the host countries refuse to grant them entry visas to visit their relatives, since they have no bank accounts or wage-paid jobs. The case was mentioned of an illegal migrant who was involved in an accident at work in the United States, as a result of which he was paralysed. His wife has to raise five children and at the same time find a way of obtaining a visa on humanitarian grounds in order to travel to the United States to look after her husband. Because of the debts this woman has already incurred she is unable to borrow more to pay the smugglers to take her to see her husband. Meanwhile, because of her husband's illegal status in the United States, he has received no compensation for the accident.

46. The families suffer the burden of the debt left behind by their relatives, and the distress it causes, as well as constant harassment by the usurers and their lawyers. Illiterate indigenous women showed papers on which they had placed their thumbprints, giving up property and land. Lastly, mention was made of cases which demonstrate the difficulty and expense of repatriating bodies to Ecuador. One of the civil-society organizations proposed that the cost of the new passport to be issued in May 2002 should include insurance in the event of death to cover repatriation of the body.

B. Cases of trafficking and smuggling of minors reported to the Special Rapporteur

47. The Special Rapporteur was provided with information allegedly gathered in 1999 concerning trafficking in minors, including a high percentage of indigenous minors, from the coast of Ecuador allegedly to Japan. According to the information provided to the Special Rapporteur, this network operates using cruise ships visiting Ecuador and the Galapagos area. The traffickers are said to offer young people in Ecuador and their families US$ 6,000 for a year's work in Japan as Spanish teachers or domestic employees. The families hand over their children in exchange for the sum agreed. The children are then taken by ship to Japan, where they are reported to be enslaved in the sex industry. Reports have also been received of networks trafficking in indigenous children who are allegedly taken to Venezuela and Uruguay to work selling handicrafts or as members of networks of street beggars.

IV. THE CONTEXT OF IMMIGRATION INTO ECUADOR

48. The Special Rapporteur was provided with information that the countries generating the greatest volume of migration to Ecuador include Colombia, with which there is a long tradition

of migration in both directions. In the interviews she held, the Special Rapporteur was informed that there is great concern in various circles at the growth of xenophobic sentiments directed towards Colombian migrants, who are often regarded as being involved in crime or drug trafficking. On the border, it was reported that such sentiments are becoming more acute as the conflict in Colombia and the application of Plan Colombia affect security and economic well-being in the region. The Foreign Minister informed the Special Rapporteur in this connection of a development programme along the northern border which the State is implementing together with IOM and USAID and which is said to make a direct contribution to stability and consolidation in the provinces of Carchi, Esmeraldas and Sucumbíos. IOM reported that the purpose of the programme known as "Strengthening of communities in the northern provinces of Ecuador" is to conduct activities that provide real and sustainable benefits to the local population, such as improving health conditions, promoting development by upgrading transport arteries and meeting the needs of displaced population groups coming from Colombia.

49. The Special Rapporteur was provided with information concerning the situation of Colombians fleeing from their country as a result of the internal conflict and the implementation of Plan Colombia. A total of 4,281 Colombians sought refuge between January 2000 and 31 October 2001. Of these, a total of 2,106 cases are under consideration, 1,620 have already been accepted as refugees and 555 have been denied refugee status. The regulations for the application in Ecuador of the rules contained in the 1951 Geneva Convention on the Status of Refugees and the 1967 Protocol to it established a commission to determine refugee status, composed of two officials from the Foreign Ministry and one from the Ministry of the Interior. A representative of UNHCR participates as an observer. The law provides that persons granted refugee status are issued with a 12-IV visa, on the basis of which they can request the Ministry of Labour to issue an employment card to enable them to work. It also provides for appeals to the Foreign Ministry against denial of refugee status.

50. In Sucumbíos, the Provincial Head of Migration informed the Special Rapporteur that very few Colombians are officially registered or enjoy proper status as migrants in the region. It was also reported that between September 2000 and February 2001, the number of persons entering Ecuador from Colombia doubled from 600 a month to 1,400. The Provincial Head of Migration said that a large proportion of those affected by violence in Colombia make use of Ecuadorian territory as a transit zone and return home through other border crossings. Others fleeing the armed conflict in the neighbouring country do not seek refugee status because they make use of family ties or friends to settle locally, sometimes temporarily until they can return home. Others again head for cities inside Ecuador, because of the lack of jobs in the area of Lago Agrio - the cause of the economic depression affecting the town, the Special Rapporteur was told, since the dollarization of the economy, the rise in violence in Colombia and the application of Plan Colombia, which have had an impact on trade.

51. In the province of Sucumbíos, UNHCR informed the Special Rapporteur that, of the 994 Colombians who had been granted refugee status in the province, 54 had opted for voluntary repatriation with the help of UNHCR, 350 continued to live in the area (only 11 of them in the hostel intended for refugees), while the remainder were thought to have moved to other parts of Ecuador, or had for the most part returned to Putumayo.

52. Interviews conducted in Lago Agrio indicated that most Colombians are migrants engaging in informal trading. It was also reported that Colombians are members of criminal gangs in the area or are smugglers. Colombians are intensely stigmatized as violent and non-law-abiding. The population of Lago Agrio attribute the rise in crime to the growing immigration from Colombia.

53. In Santo Domingo de los Colorados, it was reported that there are between 22,000 and 25,000 Colombians, of whom only 8,500 enjoy official status (by virtue of registration as migrants), while the migration status of 1,500 more is under consideration. The Municipality of Santo Domingo indicated that during 2001 between 3,500 and 4,000 Colombians displaced by the consequences of Plan Colombia had arrived, and that an official request had been made to be included in the National Contingency Plan.

54. The Special Rapporteur was concerned to learn of the exploitation of Colombians who settle in agricultural estates and are used as cheap labour or work in exchange for food and shelter. Also of concern are reports of smuggling of persons in the area of Santo Domingo and the departure of hundreds of inhabitants from the area via illegal migration routes, using the networks operating at the coast. Lastly, emphasis should be placed on a problem of which the Special Rapporteur was informed by several sources, and which also occurs in Santo Domingo, in connection with the use of the "late registration" procedure by foreigners in order to acquire Ecuadorian citizenship illegally.

55. In the context of the Migration Act, mention should be made of the grounds for the exclusion of foreigners laid down in article 9,[12] which are of concern to the Special Rapporteur because of their discriminatory nature and their incompatibility with international human rights standards. The grounds include: diseases deemed to be serious, chronic and infectious; sexual deviance or progressive general paralysis, including habitual alcoholism, epilepsy, cretinism, blindness, and generally all handicaps which prevent the sufferers from working; illiteracy in persons aged over 15 and gigantism.

56. The expulsion procedure, known as deportation proceedings and described in chapter V of the Act, is initiated ex officio by the General Intendant of Police. It is noteworthy that the decision of the Intendant to issue the deportation order is not subject to administrative or judicial appeal, in violation of the provisions of article 13 of the International Covenant on Civil and Political Rights, to which Ecuador is a party.

57. In the prison establishments she visited, the Special Rapporteur noted that some of the foreign prisoners had had contacts with their consular representatives while being held. However, the situation of many prisoners from countries with no consular representation offers cause for concern. Testimony was received from persons who had had no consular assistance, and could not speak Spanish or English, but had nevertheless been tried without even being able to communicate with their defence counsel, for lack of interpreters. Most of those persons came from African, East European and Asian countries.

58. The Special Rapporteur also encountered situations in which foreigners found guilty of ordinary offences had completed their sentences but were still in prison because they did not have travel documents or money to pay for their repatriation. Such persons appeared to be in prison indefinitely until the situation could be resolved. In the case of foreigners from countries with no consular representation, the situation was made worse by the fact that there was no way to obtain travel documents in Ecuador. Prisoners reported that they had been offered false travel documents by some prison officials acting on behalf of the networks of smugglers in the prisons. The Special Rapporteur is also very concerned at reports that some foreigners have had their passports taken away by police officers when they were detained or questioned.

59. The Special Rapporteur received testimony from an Indonesian citizen who claimed to have been a minor at the time she was arrested. She said she had presented documents in her language which confirmed that she was a minor, but which had been rejected in court because they had not been translated into Spanish. If what she says is true, she was sentenced as an adult to eight years' imprisonment.

60. The Special Rapporteur also spoke to migrants who had been detained because they had no papers, because of their illegal status, or because they carried false documentation.[13] On 7 November, she interviewed two citizens of Sri Lanka whose request for asylum and refugee status had been accepted by the Determination Committee on 24 September. These persons were still in detention and were the subject of criminal proceedings for attempting to travel with false documents, in violation of the provisions of the 1951 Convention on the Status of Refugees, which lays down that refugees using false documentation shall not be punished.

61. The Special Rapporteur noted the overcrowding prevailing in most of the prisons she visited. She also noted the de facto discrimination suffered by foreigners because they had no families who could visit them or give them money for food.

V. FORUMS FOR DEVELOPING ECUADOR'S POLICIES RELATING TO MIGRATION

62. The Foreign Ministry informed the Special Rapporteur that Ecuador is making efforts to draw up a State policy on migration which takes account of the human rights of migrants. The process was based on two initiatives involving cooperation between the State and major partners in society. The first initiative was the Operational Plan relating to the Human Rights of Migrants, Foreigners and Refugees, agreed by the Government and civil-society organizations represented in the Sub-Commission on the Rights of Migrants, Foreigners and Refugees set up under the National Plan on Human Rights.

63. The Operational Plan relating to the Human Rights of Migrants, Foreigners and Refugees was adopted by consensus between the State and civil-society organizations in November 2000. It sets out three key objectives: to secure a legal framework which will guarantee effective respect for human rights; to strengthen existing national machinery for protection and assistance; and to carry out training, publicity and awareness creation among the population concerning the rights of migrants, foreigners and refugees.

64. The representatives of civil society informed the Special Rapporteur that they value highly the process of cooperation under way with Government bodies. However, there are grounds for concern relating to the monitoring and application of the arrangements that have been reached, owing in part to the lack of resources mentioned by the Foreign Ministry which has prevented the holding of three regional seminars to publicize the agreements. At the same time, it is important to underline the interest manifested in the areas where migration originates in the application of the provisions of the Plan.

65. The Special Rapporteur received information on the second forum, which arose from the negotiations on the initial agreements reached in the dialogue on migration between the Government and indigenous, peasant and social organizations. These agreements, signed on 29 May 2001, relate to legislative reform designed to guarantee the right to Ecuadorian nationality for the children of Ecuadorian migrants born outside the country and the right to vote abroad, and also the urgent approval by the Congress of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children and the Protocol against the Smuggling of Migrants by Land, Air and Sea, supplementing the United Nations Convention against Transnational Organized Crime, the Inter-American Convention on International Traffic in Minors and the Inter-American Convention on the International Return of Children.

66. In connection with the application of the initial agreements, the Special Rapporteur received a copy of a letter sent to the President of the Congress by the participants in the dialogue concerning the monitoring of the agreements. The Chair of the Congress's Commission on International Affairs and National Defence informed the Special Rapporteur that the two protocols to the United Nations Convention against Transnational Organized Crime needed to be declared constitutional by the Constitutional Court, and would subsequently be examined by the Commission. She was also informed of concern on the part of many civil-society bodies relating to expectations as to the establishment of the fund set up under the programme for the development of Ecuadorian migrants and their families, and the delays recorded in bringing it into operation.

67. The Special Rapporteur was given a copy of the National Plan for Ecuadorians Abroad proposed by the Foreign Ministry, in pursuance of the initial agreements. The Foreign Ministry notes that, despite the existence of a law on the status of aliens and migration, the Ecuadorian legal system contains no provisions expressly governing migrants' rights, guarantees and obligations, whether they are Ecuadorians abroad or foreign migrants in Ecuador.

A. The role of the Ombudsman[14]

68. The Ombudsman told the Special Rapporteur that, as his office's priorities include protection of the human rights of migrants, the office of the National Director for the Defence of the Human Rights of Migrants had been set up in September 2001, headed by Camilo Restrepo. He also said that he had requested the Congress to increase the office's budget in order to address the phenomenon properly. His office had worked for the creation of budgeted posts of ombudsmen in New York and New Jersey, as well as in Spain and Canada. The problem they

faced was that the ombudsmen are not accredited in the countries where they operate, so that they cannot act as official representatives, or have access to migrants in detention. The ombudsman in New York reported that he had received many reports of deception or swindling by agents offering to provide official papers in the United States. A voluntary network of legal advisers had been set up with eight lawyers established in the United States. Another major problem is that of domestic violence, which is being handled by referring cases to existing social organizations that deal with this problem.

69. From the Ombudsman's viewpoint people-smuggling is a criminal issue, which is mainly for the police to handle. There is serious concern at the prevailing corruption which enables these networks to operate. In southern Ecuador the Special Rapporteur noted the need to support the efforts of the Ombudsman to help the families of Ecuadorian migrants. The work of the Ombudsman in the areas affected by emigration and smuggling should help to strengthen the link between the most neglected and vulnerable population groups and the State, and should be directed towards preventing people-smuggling.

B. The role of civil society

70. The Special Rapporteur noted that civil society in Ecuador is highly organized, including associations of migrants and their families, which have considerable skills in making proposals[15] and possess detailed knowledge of the situation regarding migration in the country and its effects. The Special Rapporteur also noted that steps taken by indigenous, social and peasant organizations in their negotiations with the authorities have led to important commitments on the part of the Government. She highly values the dialogue initiated by civil society and the work carried out together with the State on the drafting of the Operational Plan relating to the Human Rights of Migrants, Foreigners and Refugees, which has yet to be put into effect.

71. In the areas where Ecuadorian migration originates, the Special Rapporteur noted the positive impact of the efforts made by civil-society organizations who watch over the families of migrants who remain behind in Ecuador. She considers that the practical work done by such organizations as the Pastoral Social Office of Human Mobility in monitoring the situation of the families, providing guidance and psychosocial care and watching over them is vital.

C. The international community: the International Organization for Migration (IOM) and the Office of the United Nations High Commissioner for Refugees (UNHCR)

72. Representatives of IOM described to the Special Rapporteur their role in providing advice to the State in matters relating to the National Plan for Ecuadorians Abroad and the follow-up to it, so as to facilitate the preparation of programmes for its implementation. They explained that the policies of the State must include a goal of managed migration and at the same time a goal of settlement. The Special Rapporteur considers it important that IOM should continue to work together with the State and civil society for the application of the national plan and the Operational Plan with a view to providing enhanced protection for migrants, and that priority should be given to activities designed to combat and prevent smuggling from the areas in which migration originates and in the places where the networks operate.

73. The UNHCR representatives told the Special Rapporteur that UNHCR had dedicated its efforts to the protection of foreign citizens, principally Colombians, who were seeking refuge in Ecuador. They said that where the State had refused to grant refugee status, UNHCR had sought to provide the persons concerned with guidance on the available options for regularizing their stay in Ecuador. The refugees receive humanitarian assistance from UNHCR for three months, during which they seek their own sources of income. The Special Rapporteur attaches great importance to the presence of UNHCR and IOM in the northern border region as international agencies dealing with the protection of human rights.

VI. CONCLUSIONS AND RECOMMENDATIONS

74. During her visit to Ecuador the Special Rapporteur noted that the lack of opportunities for a large proportion of the population to lead and provide their families with a decent life as the result of their labours generates a large-scale flow of Ecuadorians abroad. She notes that extreme poverty, poor knowledge of legal ways of emigrating and the risks involved in illegal migration, and individuals' lack of proper papers, mean that they are especially vulnerable to networks of smugglers and traffickers.

75. The Special Rapporteur considers that combating illegal migration should be a priority in any Ecuadorian policy, since the context of smuggling produces the worst forms of human rights violations against migrants and the subjection of their families to criminal gangs. The Special Rapporteur is of the view that a coordinated State policy must be developed to check corruption and the impunity enjoyed by the networks. The principal focus of this policy should be coordinated action by the system of administration of justice and the police, and it should enjoy political and institutional backing at the highest level. The Special Rapporteur also considers that practical steps should be taken in the areas where the networks of smugglers operate, including the coastal areas and other parts of the country from where there is an outflow of Ecuadorians. Combating the phenomenon in all its dimensions and categorizing it as a criminal offence are also matters of priority.

76. In parallel to that effort, the Special Rapporteur recommends that campaigns should be organized to inform the population of legal means of migration and the risks involved in leaving the country illegally. It is important that this effort should be accompanied by appropriate documentation and be effectively monitored by the State bodies responsible for issuing identity documents. The Special Rapporteur views as positive and necessary the initiatives for the issue of a new, secure passport and to register Ecuadorian migrants abroad properly in consulates.

77. The Special Rapporteur also considers that it is of fundamental importance to provide assistance to members of migrants' families in the areas where illegal migration originates. She observed during her visit that many State institutions and provincial authorities have still not become fully aware of the problems experienced by this segment of the population, and that the State provides scant care to the families. She believes that it is important to enhance the State's capabilities and reinforce the work being accomplished by the Ombudsman in this area. She considers that the office of the Ombudsman is particularly well placed in the State apparatus to pursue initiatives to watch over migrants' families and prevent smuggling, because of its geographical coverage, its contacts with the population and the role it has to play in protecting human rights.

78. The words used by the mayor of Azogues in describing the "collective anguish" of the people of southern Ecuador clearly reflect the emotional and psychological state of the migrants' families and the impact of emigration on this part of the country. The Special Rapporteur recommends the implementation of psychosocial programmes to help the families of migrants who have remained behind, in a joint effort by State institutions, civil society and the international community.

79. The Special Rapporteur also recommends an active policy of providing advice on how to invest migrants' remittances productively, and urges that the fund set up under the programme for the development of Ecuadorian migrants and their families should be brought into operation, together with other initiatives designed to facilitate access to credit. She also considers that programmes to guide migrants' families in the productive investment of remittances should be carried out, in cooperation with associations of migrants and their families.

80. The Special Rapporteur deems it important to examine appropriate legislative reforms, as referred to in the Operational Plan relating to the Human Rights of Migrants, Foreigners and Refugees, to bring national standards into line with the commitments entered into by Ecuador in the field of human rights. In particular, she considers that the Migration Act should be revised to ensure that it does not contain discriminatory criteria which exclude foreigners. She also believes that consideration should be given to introducing legislative reforms so that deportation orders are subject to administrative or judicial review and that victims of smuggling on Ecuadorian territory are not penalized. Lastly, she is of the view that Ecuador should seek solutions to the situation of foreign migrants who remain in detention after serving their sentences, although their release has been ordered, because lack of money is delaying their deportation.

81. The Special Rapporteur notes with concern the situation of illegal migrants in Ecuador and indigenous migrants in the cities, who suffer stigmatization, discrimination and xenophobia, and recommends that Ecuador should put into effect the provisions agreed at the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance in order to address this problem in the country. In that regard, she deems it important that the State should guarantee migrants who have no papers access to basic educational and health services without discrimination. She also welcomes the agreements reached under the Operational Plan relating to the Human Rights of Migrants, Foreigners and Refugees for efforts to carry out training, publicity and awareness creation among the population concerning the rights of migrants, foreigners and refugees, and recommends their implementation.

82. The Special Rapporteur received with satisfaction the information supplied by the State and civil-society organizations and indigenous, social and peasant organizations concerning the agreements that have been reached, and urges the parties to the agreements and those observing these processes to continue to join hands in putting them into effect. In particular, the Special Rapporteur recommends the effective articulation of State migration policy through all its agencies and with the support of civil-society organizations, organizations of migrants and their families and the international community.

83. The Special Rapporteur encourages Ecuador to continue to conclude bilateral agreements to regulate migration abroad by its nationals and to coordinate with the Ministry of Labour all matters relating to migrant workers. She also learned with great concern of the testimony of migrants and their families reporting abuses committed in States through which Ecuadorian migrants pass and where networks of smugglers operate, for example in Central America and Mexico. In that regard, she recommends that Ecuador should include in its external negotiating strategy dialogue with such States in order to apply measures of protection for its citizens, the effective investigation of abuses, the non-penalization of victims of smuggling and a strategy for preventing and combating smuggling which has been coordinated among those same States. She takes this opportunity to endorse the wish expressed by migrants' families concerning the conclusion of agreements among States whereby Ecuadorian citizens can serve sentences to which they have been sentenced within Ecuador.

84. The Special Rapporteur considers it important that civil society and indigenous, social and peasant organizations should pursue the dialogue initiated with the State to protect and promote the human rights of migrants. In that regard, she considers it important that the organizations should share their knowledge and experience and provide the State with advice. She believes that the organizations would benefit from developing regional and international networks to exchange and coordinate actions. She encourages organizations of migrants and their families to continue to step up their advocacy for protection of their rights.

Notes

[1] The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child, the International Convention on the Elimination of All Forms of Racial Discrimination, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and the two optional protocols to the International Covenant on Civil and Political Rights. Ecuador has only signed and not ratified the optional protocol to the Convention on the Elimination of All Forms of Discrimination against Women, the optional protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict and the optional protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography.

[2] Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, and Protocol against the Smuggling of Migrants by Land, Air and Sea.

[3] Supreme decree No. 1899. RO/382 of 30 December 1971.

[4] Supreme decree No. 1900. RO/382 of 30 December 1971.

[5] Supreme decree No. 1897. RO/382 of 30 December 1971.

[6] INEC projection of 1990 census figures to the year 2000.

[7] Working paper prepared by the Foreign Ministry and presented to the Special Rapporteur during her visit.

[8] Drawn up in 2001 by the Centre for Economic and Social Rights (CEDS), the Regional Foundation for Advisory Services in Human Rights (INREDH) and the Servicio Paz y Justicia - Ecuador (SERPAJ-E).

[9] Statistics prepared by the office of the National Director for Migration for the months January-September.

[10] The Special Rapporteur noted that article 8 of the regulations issued under the Migration Act provides that Ecuadorians aged under 18 must hold a genuine and valid individual passport or a copy of the birth certificate bearing an authorization to travel signed by their legal representative, with certification of the signature by a competent authority, or must be accompanied by their legal representative.

[11] The revised version provides that "Anyone who, by illegal means, facilitates migration by Ecuadorian or foreign nationals to other countries shall, unless this constitutes a more serious offence, be liable to ordinary imprisonment for a term between three and six years".

[12] Article 9, paragraph 13 was suspended by the then Court of Constitutional Guarantees by resolution 12, published in the RO 119 of 1 February 1993. However, the Supreme Court annulled this decision by a resolution published in the RO 392 on 4 March 1994.

[13] Article 37 of the Migration Act stipulates a prison term of six months to three years for "persons who complete, sign, issue or obtain a visa, passport or any migration document in an arbitrary manner, on the basis of false information or by improperly claiming Ecuadorian nationality".

[14] In Ecuador the Congress elects the Ombudsman by a two-thirds majority from among the names proposed, after hearing the views of human rights organizations (Constitution, art. 96). A two-thirds majority of the Congress members is also required to dismiss the Ombudsman.

[15] The proposals made by civil-society organizations and presented to the Special Rapporteur range from the establishment of a network of trade unions for migrants in Spain, together with Spanish trade unions, to possible bilateral agreements with countries of transit.